



The Rt Hon. Michael Gove MP
Secretary of State for Environment, Food and Rural Affairs
House of Commons
London
SW1A 0AA

23 August 2017

Dear Michael,

**Minor & Temporary Works on Common Land
A proposal to streamline regulation whilst improving the management of commons**

In the course of my involvement with many areas of registered common land I have become aware that the requirement to obtain the consent of the Secretary of State for minor or temporary works imposes an unnecessary burden on organisations that are managing commons for public benefit.

I suggest a solution to this problem, which I believe will allow further money to be raised for the beneficial management of common land whilst removing an unnecessary regulatory requirement.

Section 38 of the Commons Act 2006 prevents certain works being carried out on commons without the consent of the Secretary of State for EFRA. The works in question are those that "*have the effect of preventing or impeding access to or over [common land]*" and include in particular fences, ditches, embankments and building work.

Let me first stress that I wholly support the prohibition of damaging works on commons, and the criteria established by the 2006 Act for determining whether an application should be given consent. I am in full support of DEFRA's "*Common Land consents policy*" and the guide entitled "*A Common Purpose*". I also have no complaint about the way in which applications for works are dealt with and decided by PINS / DEFRA.

However, I believe that the bar has been set slightly too high in relation to works that are *de minimis*, temporary or beneficial to the common in non-contentious ways. I therefore make the following suggestions which, at their simplest, would require only the alteration of a single policy document.

There are two existing sources of exemption from the need for consent. The first is the Exemption Order¹, with which I am not here concerned. The second is PINS' "*Common Land Guidance Sheet 1b*", which lists a number of works and processes that do not need consent because they are small, temporary, do not impede access or facilitate access. The Guidance Sheet helpfully notes that "*the list is not exhaustive and will be developed and refined over time.*" The Guidance Sheet also observes that it is not an authoritative statement of law. However, there are no court judgments with any bearing on the issue of *de minimis* works on commons.

The existing list specifies a number of very small items (eg signs, gates, temporary shelters for animals requiring emergency treatment, cattle watering troughs). It does not make any allowance for small, sensitively positioned, non-permanent commercial or income-generating activities, the profits from which are to be used for the management of the common. Neither does the existing list provide any comfort "by analogy" with listed items

Accordingly, it is necessary to apply for the consent of the Secretary of State if it is desired, for instance, to sell Christmas trees from a small corner of an existing car park for a few weeks a year, with all profit to be ploughed back into management of the common. I am aware of many instances in which minor activities of this sort have been cancelled when the need for formal consent, the time taken to secure consent, and the resources involved, are realised.

Very prominent amongst the class of organisations that are affected by this problem are charities and local (and other statutory) authorities, which together own and/or manage large areas of common land in England. Certain statutory Commons Councils might also fall into this class.

These bodies, which are under legal duties² toward the commons that they manage are, in one way or another, funded by the public and regulated to ensure that their funds are not misused for private gain. Many of these bodies are eager to increase their management work on commons and to fund this by carrying out or allowing small, sensitive, temporary, commercial activities to take place on common land.

Examples of such small-scale activities include:

- Stacking of timber.
- Temporary sales of goods such as crafts, locally made foods, Christmas trees and firewood;
- Sale of refreshments on existing car parks by mobile vendors;
- Installation of pay-and-display parking;³
- Running or cycling events;

None of these activities, if properly limited, need cause any reduction in access to the common or any diminution to the attractiveness of commons for people and wildlife.

¹ The Works on Common Land (Exemptions) (England) Order 2007. Mainly concerned with short and medium term fencing for grazing purposes, and the placement of bollards.

² Deriving either from their charitable objects, or statute, respectively.

³ Consent has recently been granted to Surrey County Council to install pay and display parking meters at Albury Downs (aka Newlands Corner). PINS' reference COM 3158795. The costs to the Council Tax payer of preparing the application were not insubstantial.

I would like to suggest that a further class of activities should be inserted into Common Land Guidance Sheet 1b to permit small, temporary, commercial activities to take place on common land without formal consent from the Secretary of State.

In order to ensure that such activities are fully consistent with the spirit of Common Land Guidance Sheet 1b as it currently stands (ie that they are so small or of such short duration that they do not impede access, do not constitute a new impediment to access, or facilitate access) this further class of activities should be subject to the following limitations:

- a) To take place only on existing car parks or existing areas of hard standing.
- b) To take place only on a certain proportion of the area of the existing car park or area of hard standing, or a certain number of square metres, whichever is the smaller.
- c) To take place only where no existing access points or ways will be impeded.
- d) To take place only on a certain number of days in any year.
- e) To take place only during hours of daylight.

And in order to ensure that public benefit achieved:

- f) This exemption should be allowed only to bodies (such as charities and public authorities) that have a legal obligation toward the management of the common in question and a legal bar on the distribution of profits.⁴
- g) The bodies organizing the activities be required to indicate to the public the manner in which funds so raised will be used.
- h) Those carrying out the activities to be subject to contractual requirements to collect litter and to leave the site in a suitably tidy condition.

I think that PINS would agree that any activity falling that satisfies these criteria is one that would readily be granted consent if a formal application were made. An amended Common Land Guidance Sheet 1b would obviate the need for an application.

Naturally, it is not intended that inclusion of activities of these sorts would obviate the need for any other consents that might be required.

⁴ In many instances, eg mobile food vendors, the activity itself will not be carried out by the public authority or the charity itself, but will be licensed to an individual vendor for a fee. That fee will constitute the profit made from the activity by the licensor, whilst the licensee trades at his/her own risk, with a view to allowable personal profit.

I hope that you will agree that my suggestion is not only capable of reducing the regulatory burdens on those managing commons, but also of raising money for the purpose of improving the condition of commons for the benefit of their neighbourhoods and the general public. I do not wish to see commons commercialised or their characters changed and I do not seek carte blanche for any activity that would not currently be given s. 38 consent by the Secretary of State.

Yours Sincerely

A handwritten signature in black ink, appearing to read 'Mike Goodman', enclosed within a hand-drawn oval.

Mike Goodman
Cabinet Member for Environment and Transport

Copy to:

Ms S Richards, Planning Inspectorate
Mr R Holland, Planning Inspectorate